



January 23, 2001

Ms. Lamis A. Safa
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-0241

Dear Ms. Safa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143654.

The City of Houston Police Department (the “department”) received a request for a complaint file filed against the requestor, a former police officer with the department. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

You contend that the submitted information is confidential under section 552.101 of the Government Code in conjunction with sections 143.089 and 143.1214 of the Local Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Chapter 143 of the Local Government Code encompasses civil service rules for municipal fire and police departments. Section 143.089 of the Local Government Code sets out rules governing the content and release of two types of personnel files maintained by municipal fire and police departments. The first type of file must be maintained by the department. Local Gov’t Code § 143.089(a). (“The director or the director’s designee shall maintain a personnel file on each fire fighter and police officer.”). This mandatory file must contain “any letter, memorandum, or document relating to: ... (2) any misconduct by the fire fighter or police officer if the letter,

¹In reaching our conclusion here, we assume that the “representative sample” of the requested records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter ...” *Id.* § 143.089(a)(2). Release of information contained in this mandatory file is governed by subsections (e) and (f) of section 143.089, which state:

- (e) The fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person’s personnel file. ...
- (f) The director or the director’s designee may not release any information contained in a fire fighter’s or police officer’s personnel file without first obtaining the person’s written permission, unless release of the information is required by law.

Because information contained in this type of file may be released on the basis of other law or the person’s consent, this information is not confidential and is, therefore, subject to the Act. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990).

The second type of file described in section 143.089 *may* be maintained by the department for its own use. Local Gov’t Code § 143.089(g) (“A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department’s use ...”). The information contained in a section 143.089(g) file is confidential. “[T]he department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer.” *Id.*; *see also City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

Subchapter G of chapter 143 is applicable to a municipality with a population of 1.5 million or more, including the City of Houston. Subchapter G includes section 143.1214 of the Local Government Code, which provides in relevant part:

- (b) The [police] department shall maintain an investigatory document that relates to a disciplinary action against a . . . police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a . . . police officer that the department did not sustain, only in a file created by the department for the department’s use. The department may not release those documents to any agency or other person except another law enforcement agency[.]

Local Gov’t Code § 143.1214(b).

You explain that the submitted information contains records of an internal investigation located in the Houston Police Department Internal Affairs Unit of the Office of Inspector General. You state that the information reflects unsustained allegations of misconduct against a police officer and that it is kept solely in the department’s investigative file for the department’s own use. Based on your arguments and our review of the submitted

information, we agree that the information is confidential under section 143.089(g) and 143.1214(b) of the Local Government Code, and must therefore be withheld under section 552.101 of the Government Code.

Because we find section 552.101 of the Government Code, in conjunction with sections 143.089(g) and 143.1214(b) of the Local Government Code, to be dispositive, we need not address your other raised exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

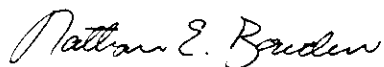
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 143654

Encl: Submitted documents

cc: Mr. Kevin D. Templeton
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(w/o enclosures)